

# General Terms and Conditions of AVE

## Audio Visual Equipment GmbH

Our terms regarding leasing are defined under § 1 to § 18 and § 30, and regarding sales under § 1 and § 19 to § 30.

### § 1 Applicability

These General Terms and Conditions serve as the basis for all contracts concluded between the company AVE Audio Visual Equipment GmbH (hereinafter referred to as "AVE") and its contractual partners (hereinafter referred to as "Lessee" or "Buyer") for the sale or leasing of items, and the related provisions of materials and services by AVE. All terms and conditions set forth hereinbelow apply exclusively. Terms and conditions of the Lessee or Buyer deviating from these terms do not apply.

### Leasing

### § 2 Offer and conclusion of the contract

1. Offers made by AVE are generally understood as subject to change and non-binding. Their legal validity requires the written order from the Lessee or the written order confirmation from AVE.
2. The issuance of a written order by the Lessee is understood to be an offer to conclude a contract. If AVE accepts this order, a written confirmation will be sent to the customer at the latest 10 days before the start of the work order, whereas also at the latest 14 days after the issuance of the order.

### § 3 Lease term

The lease term shall begin when the leased items are collected from AVE's warehouse (start of the lease) and end not before the return of the leased items to the warehouse (end of lease). Even if the transport is organised by AVE itself or the carrier contracted by AVE, the departure from the warehouse and the return to the warehouse, respectively, shall be decisive for the length of the lease term. The precise lease term is therefore expressly not limited merely to the duration of the use of the leased material but it furthermore includes delivery periods, storage periods, etc. Each started day will be charged.

## § 4 Rental price

Unless differing fixed prices have been agreed for certain services pursuant to § 2 (1), the prices shall apply to the provision of the leased items as per the price list respectively valid on the signing of the contract. In the event of an agreed fixed price, AVE reserves additional invoicing by list price in the event that the return dates are not met.

## § 5 Services

Services, which are performed besides the pure provision of materials, in particular logistics services, assembly and attendance by trained personnel, shall be performed against payment based on separate agreements, the conclusion and content of which shall also be subject to § 2 (1). If the amount of the remuneration has not been agreed separately as a fixed price, AVE has the right to charge a fee payable as appropriate to expense.

The offered daily fees relate to 8 working hours plus break times (ArbZG) unless otherwise agreed in writing. Accrued overtime hours are calculated with 12.5% of the corresponding daily fee.

## § 6 Cancellation by the Lessee

The Lessee may cancel the contract up until at the latest 3 days before the start of the lease against payment of a compensation fee. The cancellation requires the written form for validity. If the Lessee cancels, AVE may demand the payment of a compensation fee without proof of a loss.

The amount of the compensation fee shall be calculated as follows and be due for payment immediately on the cancellation date:

- Cancellation at the latest until 30 days before the start of the lease: 30% of the order value.
- Cancellation at the latest until 14 days before the start of the lease: 50% of the order value.
- Cancellation at the latest until 8 days before the start of the lease: 75% of the order value.  
(Starts of lease refers to the time, when goods leave our warehouse and/or the booked crew's arrival.)

For cancellations on short notice, which are received less than 8 days before the start of the lease cannot be accepted. Even if the Lessee does not utilise the services in this case, the full 100% of the order value shall be paid. The date of the cancellation shall be determined by the receipt of the cancellation notice at AVE.

All works or productions already completed or merely started or any services already performed on the cancellation date shall be due 100%, regardless of the aforementioned lead times and the related percentage rates. AVE further reserves the right to fully charge any incurred costs and expenses (e.g.

time for planning or inspection dates, travel costs, expenses or other external costs already incurred and proven, which relate to the cancelled order), even if they would not have been charged had the complete order been fulfilled.

The foregoing provisions also apply with regard to such remuneration or portions of remuneration that have been agreed for additional services in the definition of § 5, if the Lessee does not prove that AVE has not incurred a significant loss thereby or if this loss is less than the compensation corresponding to the remuneration.

## § 7 Payment

1. Unless deviating payment modalities have been agreed effectively pursuant to § 2, the overall remuneration shall be due without deductions/discounts by the agreed start of the lease (advance payment). AVE reserves the right to refuse the leased items or refuse performance of the services if no payment has been received.
2. Not the instruction of payment but the receipt of the money shall be decisive for the time of the payment. This applies in particular to electronic payment transactions.
3. Rights of the Lessee for offsetting and withholding are excluded, unless the Lessee's counter claims have already been determined by final judgment or unless they are uncontested.
4. If no advance payment has been agreed, the payment shall be made within a period of 10 days after receipt of the invoice, unless a different payment target is granted/agreed on the invoice.
5. The remuneration and all further claims arising from the contractual relationship shall incur interest after the end of the payment period at the officially valid discount rate of the Bundesbank (consumers 5% and businesses 8%).

## § 8 Transfer for use and warranty

1. AVE undertakes to transfer the leased item from the AVE warehouse in an appropriate condition and in accordance with the contract for use for the duration of the agreed lease term. Leased items can be collected and returned only during the regular business hours or instead on individually scheduled appointments.
2. The Lessee shall inspect the leased items on acceptance for completeness and correct functioning, and inform AVE without delay in case there is a defect. If the Lessee fails to inspect the items and/or the notification of a defect, the condition of the provided items shall be deemed to be defect-free and accepted, unless the defect could not have been recognised in the inspection. If such a defect occurs at a later time, the Lessee shall notify AVE immediately upon its discovery. If it fails to do so, the condition of the provided items shall be regarded as defect-free and accepted even in light of the

defect. A notice of defect only on return of the item cannot be accepted. If the Lessee fails to notify of a defect, it shall not be entitled to withhold payments, without prejudice to other claims of AVE, nor to bring warranty claims, terminate the existing contractual relationship, demand damage compensation claims for non-fulfilment or bring claims for unjustified enrichment.

3. If an initial defect is present of the leased items, which has been notified pursuant to paragraph 2, AVE shall have the right to either replace, redeliver or repair it at its own choice. If AVE is not able to complete and/or repair the defect in a timely manner, the Lessee may demand an appropriate reduction of the leasing rate in light of the individual defective/missing leased items. If several items are leased, the entire contract for the defectiveness of an individual item may only be cancelled if the leased items were leased together and if a defect of one part significantly affects the contractually required combined functionality of the leased items overall. Any contributory fault of the Lessee in the disruption shall preclude the Lessee's right of cancellation or the warranty obligation of AVE.

4. If equipment is rented without additional qualified support personnel, etc., even though AVE expressly recommends this (because this equipment is technically elaborate or difficult to operate), any liability by AVE for the functional failure is excluded. This shall apply, unless the Lessee can verifiably prove that these defects are not due to operating errors or improper handling.

5. For the rest, the Lessee's warranty claims, in particular damage compensation claims for non-performance independent of fault (Sec. 538 BGB [German Civil Code]) and defects, which occur in the course of the lease term under the care of the Lessee, shall be excluded. Regardless thereof, the Lessee shall notify the lessor immediately if a defect arises or if measures for the protection of the object become required because of unanticipated risks (Sec. 536c BGB).

6. If approvals of any kind (under public law, from Gema [Society for Musical Performing and Mechanical Reproduction Rights], TÜV [Technical Control Board], the air traffic safety board, under fire protection regulations, etc.) should be required, the Lessee shall be obligated to obtain these on time at its own costs. If AVE should take on the assembly and assistance, the Lessee shall prove the required permits on request, prior to the start of the assembly work. AVE does not extend any warranty for the suitability of the intended use of the leased items to receive permits.

## § 9 Damage compensation

AVE generally excludes any damage compensation claims brought by the Lessee, in particular also claims for impossibility of the service performance, non-fulfilment of orders for pressing reasons and tortious acts. This shall also apply to the services beyond leasing, such as transport, assembly or support. Likewise, claims arising from consequential damages of any kind, e.g. lost profit, other financial losses, etc. are excluded.

This liability exclusion does not apply to compensation claims, where the loss was caused due to gross negligent or intentional actions by AVE, including its legal representatives and vicarious agents, nor to damage compensation claims for the absence of properties and conditions that have been expressly assured in writing. If the liability of the company AVE is already excluded, this shall also apply to the personal liability of the AVE employees.

## § 10 Obligation for the liability exclusion in favour of AVE

If the Lessee on its part has negotiated liability exclusions in its own contracts with third parties (agencies, advertising partners, artists, spectators, etc.) it shall include the terms under § 9 of these Terms and Conditions in favour of AVE in such contracts. If AVE has not acted through gross negligence or intent, the Lessee shall expressly indemnify AVE from any claims of third parties.

If a customer expects the use of third-party collaboration software which includes instant messaging, screen-sharing, video conferencing services or comparable services – such as Microsoft Teams, Cisco Webex or Skype 4 Business – AVE will not accept claims for compensation of damages in case of technical interferences or failures. The same applies as for the use of video and/or audio material provided by third parties for distribution.

Furthermore, AVE cannot be held liable for any services supplied by Internet providers or IT infrastructures provided by customers. This relates, for instance, to the quality and capacity of internet connections, the data security of content or the reliability of existing cabling and peripherals.

## § 11 Duties of the Lessee during the lease term

1. The leased items shall be treated with care. The Lessee is obligated to service the items at its own cost. AVE is entitled but not obligated to service the leased item during the lease term.
2. The leased items shall be assembled, operated and disassembled exclusively by trained personnel, and be used solely within the scope of the technical requirements. If material is leased without personnel, the Lessee shall ensure the continual compliance with all applicable safety guidelines, in particular the "UVV" accident prevention regulations and the guidelines of the VDE [Association of German Engineers].
3. The Lessee is obligated to ensure an uninterrupted power supply for the use of the leased system. The Lessee shall be liable for all outages or damages of the leased item in consequence of power

outage, interruptions of the electricity supply or current fluctuations, also regardless of its own fault. Furthermore, the Lessee shall ensure that the leased equipment is protected sufficiently from any weather conditions (precipitation, moisture, direct irradiation from the sun, etc.) This also applies to the operation as well as the storage of the material. The Lessee shall be liable for damages caused by the effects from weather.

4. In the event of minor to medium severe damages on the leased material, the Lessee shall generally bear the costs for the repair of the equipment plus all expenses (shipment, etc.) In the event of total loss or even destruction, the Lessee shall generally pay the repurchase value of the equipment (value as new, plus any possibly incurred costs such as for shipping, etc.), regardless of the state of wear of the leased item at the time when it was transferred for use. In the event of any loss of small part accessories and wear parts (light bulbs, etc.), generally the value as new will be charged even if these parts had already been used.

## § 12 Insurance

The Lessee shall obtain appropriate and sufficient insurance cover for the general risk associated with the respective leased item (loss, theft, damage, liability). The conclusion of the insurance policy shall be proven to AVE on request.

An electronics insurance policy can also be concluded directly with AVE. The costs amount to 10% of the daily leasing rate for the equipment. The following is insured under this policy: negligence, improper handling, intent of third parties, short circuit, overvoltage, induction, fire, lightning strike, ex/implosion, damages from firefighting, water, moisture, flooding, transport damages, as well as design, material or execution faults. A general cost share of EUR 200 applies to all of these damages.

Expressly not included in the cover is the loss of the leased items, regardless of the reason (theft, burglary, looting, robbery, fraud, sabotage). Furthermore, the Lessee's liability applies up to the value of the replacement of the lost leased item.

## § 13 Rights of third parties

The Lessee does not hold any property rights or rights of disposition over the surrender of the leased items to third parties. It is obligated to keep all leased items free from of any kind of encumbrances, claims, lien, and other presumption of rights by third parties. If the property of AVE should nonetheless be claimed against otherwise in any way by third parties (pledged, etc.), the Lessee shall inform AVE of this immediately and make all required documents available. The costs for the defence of interference by third parties (in particular, also claims filed in court) shall be borne by the Lessee to 100%.

## § 14 Termination of the contract

1. If there should be reason to assume that a substantial deterioration in the Lessee's financial position is impending or that such has already occurred, AVE shall be entitled to terminate the contract before or also during its term without notice and demand the immediate return of the provided material. This applies in particular if attachments or other enforcement measures are taken against the Lessee or if insolvency proceedings or out-of-court composition proceedings are opened over its assets.
2. AVE shall have a right to termination of the contract without notice if a significant deterioration in the lessor's financial position occurs, in particular, if lasting attachments or other enforcement measures are taken against it or if insolvency proceedings or out-of-court composition proceedings are opened over its assets.
3. The violation of the provisions in § 11 is deemed a use contrary to the contract, entitling AVE to terminate the entire contract relationship without notice and without requiring a warning.
4. If the Parties have agreed instalment payments, AVE may terminate the contract without notice in the event of a default on the payment of two instalments.

## § 15 Return of the leased items

1. Leased items shall be returned to the AVE warehouse only during the regular business hours, or instead on appointments scheduled in advance in each specific case.
2. The Lessee is obligated to return the equipment in fault-free condition, complete and cleaned, sorted and in compliance with the terms under § 11 (4). AVE reserves the right to inspect the returned equipment in detail after it was received. Even if no defects or shortages should be found on the return, this shall not be a confirmation of the defect-free condition or of the completeness. AVE, however, shall be obligated to notify the Lessee, at the latest within one week, in the event of a damage or defect.
3. The agreed lease term shall be observed in all cases. If this should not be possible, the Lessee shall inform AVE thereof without delay. For each day by which the return date is exceeded, the Lessee shall pay the full daily leasing rate. Moreover, AVE reserves charging further costs, which have been incurred by AVE due to the belated return (for example, the more expensive renting of leased items from a competitor, etc.) The payment per date shall be assessed, if necessary, by dividing the originally agreed total fixed price by the days of the originally agreed lease term.

## **§ 16 Long-term leased equipment**

Separate provisions apply to long-term leasing. Information will be provided on request.

## **§ 17 Fixed installation & sales services**

Separate provisions apply likewise to contractual matters pertaining to services relating to installation, integration, and assembly. AVE generally makes deliveries exclusively subject to the expanded reservation of title. Sold items shall remain the property of AVE up until the complete payment.

## **§ 18 Consumable materials, merchandise**

Consumable materials shall be charged in addition, without prior announcement, and remain unconditionally the property of AVE up until the complete payment. For the rest, these GTC shall apply analogously.

## Sales

### § 19 General provisions – scope

1. Exclusively our Terms of Sale apply; we do not accept any terms and conditions of the Buyer, which oppose our Terms of Sale, unless we have expressly agreed to them in writing. Our Terms of Sale also apply when we make unconditional delivery to the Buyer in knowledge of the conflicting terms of the Buyer deviating from our Terms of Sale.
2. All agreements concluded between us and the Buyer for the execution of this contract shall be set forth in writing in this contract.

### § 20 Offer – quotation documents

1. Our offer is subject to change, unless determined otherwise in the order confirmation.
2. Discrepancies from illustrations and descriptions and the consideration of typos or mistakes remain reserved.
3. The order signed by the Buyer shall be a binding offer.
4. We may accept this offer within two weeks by submission of an order confirmation or deliver the ordered goods to the Buyer within this period.

### § 21 Prices – terms of payment

If a payment agreement has been made, which differs from cash on delivery, the purchase price shall be due for payment immediately as of the invoice date and without deduction, unless the order confirmation states otherwise.

## § 22 Delivery

1. The delivery shall be made ex-warehouse for as long as supplies last. All deliveries shall be made, unless stated otherwise, by DPD or carrier.
2. Damage compensation due to belated delivery shall be excluded on principle.
3. The delivery periods are indicated without commitment in all cases.
4. Part deliveries are permissible if they are reasonable for the customer. Any costs for postage incurred in the case of partial deliveries, which are requested from the Buyer or for articles to be packaged separately shall be borne by the Buyer.
5. The fulfilment of our delivery obligation furthermore requires the timely and due fulfilment of the Buyer's obligations.
6. In the event of a temporary prevention from performance outside of our control, the delivery period shall extend by the period for which this prevention from performance persists.
7. Transport damages must be reported without delay.

## § 23 Transfer of risk – packaging costs

1. Delivery is agreed for the account and at the risk of the Buyer ex-warehouse, unless determined otherwise in the order confirmation. The risk shall transfer to the Buyer, as soon as the delivery has been handed over to the carrier or when it leaves the warehouses of AVE for the purpose of shipping.
2. Transport packaging and other packaging in accordance with the Packaging Ordinance will not be taken back. This does not apply to pallets. The Buyer shall see to the disposal of packaging materials at its own cost.
3. On request, we will obtain insurance cover for the delivery under a transport insurance policy; the cost incurred for this purpose shall be borne by the customer.

## § 24 Returns

1. Returns of defect-free shipments will not be accepted for credit without our prior agreement. We will charge a cost share of 20% of the net product value for the processing of the return for agreed returns of defect-free shipments. The return shipment shall be made in defect-free condition and in the original packaging.
2. Special orders, demonstrator equipment and used equipment are excluded from the possibility of returns. Changes in the order and cancellations require the written form and our agreement.

## § 25 Warranty for defects

1. Insofar as the object of purchase has a defect that falls within our responsibility, we shall have the choice of either repairing the defect or making a replacement delivery. In case repair of the defect is chosen, we shall be obligated to bear all expenses required for the purpose of correcting the defect, in particular transport and travel costs, and costs for material and work, insofar as these are not increased for the reason that the object of purchase has been transported to a place other than the place of fulfilment.
2. If we are not willing or not able to rectify the defect or make a replacement delivery, in particular, if it is delayed beyond appropriate deadlines for reasons within our responsibility or if the repair of the defect and/or the replacement delivery fails otherwise, the Buyer shall be entitled, at its choice, to reverse the contract (reversal) or to demand a corresponding reduction of the purchase price (reduction).
3. Unless stated otherwise below, further claims of the Buyer – regardless of the legal reason – shall be excluded. We shall therefore not be liable for any damages that have not occurred on the item of delivery itself; in particular, we shall not be liable for lost profit or other financial losses of the Buyer.
4. The foregoing exclusion of liability shall not apply if the cause of the damage is due to intent or gross negligence. It shall also not apply if the Buyer claims damages for non-performance in accordance with Sec. 463, Sec. 480 (2) BGB due to the absence of assured properties and condition.
5. If we negligently breach a cardinal duty or a duty that is essential to the contract, our liability for damages shall be limited to the typical predictable damage for the contract.
6. The warranty period is 12 months from the date of the transfer of risk. This period is a limitation period and also applies to claims for the compensation of consequential damage from defects, insofar as no claims from tortious act are claimed.

## § 26 Processing of third-party guarantees

Guarantees are promises of performance, which are extended by the manufacturer to the customer. Therefore, they do not establish any obligation on our part. The customer itself is consequently obligated to create the conditions at its own cost for the assertion of the claims under the manufacturer warranty. In particular, the customer shall bear the costs for transport to and collection from the manufacturer, assembly and disassembly and, if applicable, the costs for its replacement equipment.

## § 27 Reservation of title

1. The goods shall remain the property of AVE until complete payment of the purchase price.
2. Before the transfer of ownership, pledging, processing or modification, as well as transfer by way of security shall not be permitted without our agreement.

## § 28 Right of revocation for consumers

(Consumer is any natural person, who concludes a legal transaction for purposes that can be primarily attributed to neither their commercial nor their self-employed professional activity.)

### **Instruction on the right of revocation**

You have the right to revoke this contract within fourteen days without a statement of reasons.

The revocation period is fourteen days from the day

- on which you or a third party you have named and who is not the transport company has taken the product into possession or, if you have ordered one or more items as part of one integrated order and if they are or will be delivered in one delivery;
- on which you or a third party you have named and who is not the transport company has taken the last item into possession or, if you have ordered multiple items as part of one integrated order and they will be delivered separately;
- on which you or a third party you have named and who is not the transport company have taken the last partial shipment or the last item into possession, if you have ordered a product delivered in several part deliveries or in several pieces;

To exercise your right of revocation, you have to inform us (AVE Audio Visual Equipment GmbH, De-Gasperi-Straße 3, 51469 Bergisch-Gladbach; email address: [info@avepro.net](mailto:info@avepro.net)) by means of a clear statement (e.g. a letter sent by post, a fax or email) about your decision to revoke this contract.

To do so, you can use the enclosed sample revocation form, but it is not mandatory to use it.

To observe the revocation period, it is sufficient if you mail the notification of the exercise of the right of revocation before expiration of the revocation period.

## **Consequences of revocation**

If you revoke this contract, we shall return all payments to you that we have received from you, including the delivery costs (except for the additional costs incurred because you have chosen a different delivery type than the one offered by us, which is the most efficient standard deliver), without delay and at the latest within fourteen days from the day on which the notification of your revocation of this contract was received by us. We will use the same payment instrument for this repayment, as the one that you have used in the original transaction, unless explicitly agreed otherwise with you. You will never be charged any fees for this repayment.

We can refuse to refund the payment until we have received the return of the products or until you have provided prove that you have returned the products, whichever is the earlier date.

You shall return the products to us by shipment or handover in person without delay, whereas in any case, at the latest within fourteen days from the day on which you have informed us of the revocation of this contract. The period will be deemed observed if you ship the products before expiration of the fourteen-day period.

You shall bear the direct costs for the return shipment of products that can be shipped in parcels and the direct costs of EUR 80 for the return shipment of products that cannot be shipped in parcels.

You are required to pay for any loss of value of the products only if this loss of value is due to a handling of the products that is not necessary for the check of their condition, properties and mode of functioning.

## **Reasons for exclusion or expiration**

The right of revocation does not apply to the following contracts:

- for the delivery of products, which are not prefabricated and the manufacturing of which is decisively determined by a personal preference of the consumer or which is uniquely customised to the personal needs of the consumer;
- for delivery of products, which can spoil quickly or the expiration date would be exceeded quickly;
- for delivery of alcoholic beverages, the price of which was agreed on the signing of the contract, which, however, can be delivered at the earliest 30 days after the signing of the contract and the current value of which is dependent on fluctuations in the market that are outside of the entrepreneur's control;
- for delivery of newspapers, magazines or journals with the exception of subscription contracts.

**The right of revocation shall expire prematurely with regard to the following contracts:**

- for delivery of sealed goods, which are not suitable for returns for reasons of health protection or hygiene, if their seal was removed after delivery;
- for delivery of products if they have been inseparably mixed based on their nature with other items after the delivery;
- for delivery of audio or video recordings or computer software in a sealed package if the seal was removed after delivery.